Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of)
DUANE MORRIS, LLP)
Request for Clarification)

ORDER

Adopted: May 10, 2005 Released: May 12, 2005

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

- 1. *Introduction*. On March 18, 2005, Duane Morris, LLP (Petitioner) filed a request¹ seeking clarification² of how resolution of a pending rulemaking proceeding could affect the permitted use of Automated Maritime Telecommunication System (AMTS) spectrum. Petitioner states that such information would be of benefit to bidders in the upcoming AMTS spectrum auction (Auction No. 61).³ For the reasons explained below, we deny the request as premature.
- 2. *Background*. An AMTS is a specialized system of coast stations providing integrated and interconnected marine voice and data communications.⁴ In 1997, the Commission amended its rules to permit AMTS licensees to provide commercial service to fixed and mobile units on land, in addition to maritime vessels.⁵ In order to preserve the core purpose of this marine radio spectrum, the Commission imposed certain conditions on the provision of service to units on land, including a requirement that public coast stations serving units on land must afford priority to marine-originating communications.⁶ In 2002, the Commission adopted a geographic area licensing approach for AMTS stations.⁷ The Commission adopted a "substantial service" coverage requirement, and gave "safe-harbor" examples to provide

¹ Letter dated Mar. 18, 2005 from William K. Keane to Marlene H. Dortch, Secretary, Federal Communications Commission (*Letter*).

² Petitioner describes its submission as a "request for clarification," but we conclude that it is appropriately treated as a request for declaratory ruling pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2. *See* Centel Corp., *Memorandum Opinion and Order*, 4 FCC Rcd 2241, 2244 n.3 (CCB 1989) ("Although Centel filed its petition in CC Docket 86-111 as a request for 'clarification', we are treating the petition as a request for declaratory ruling under Section 1.2 of the Rules and are resolving the issue pursuant to delegated authority.").

³ See Automated Maritime Telecommunications System Spectrum Auction Scheduled for August 3, 2005: Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures for Auction No. 61, *Public Notice*, 20 FCC Red 2057 (WTB 2005).

⁴ Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, RM-5712, 6 FCC Rcd 437 (1991).

⁵ See Amendment of the Commission's Rules Concerning Maritime Communications, Second Report and Order and Second Further Notice of Proposed Rule Making, PR Docket No. 92-257, 12 FCC Rcd 16949, 16965 ¶ 24 (1997).

⁶ See id. at 16965-66 ¶¶ 25-26; see also 47 C.F.R. \S 80.123.

⁷ See Amendment of the Commission's Rules Concerning Maritime Communications, Second Memorandum Opinion and Order and Fifth Report and Order, PR Docket No. 92-257, 17 FCC Rcd 6685, 6696 ¶ 24 (2002).

licensees with a degree of certainty regarding how to comply with the requirement.⁸ In 2004, the Commission proposed to amend its rules to permit AMTS licensees to provide private mobile radio service, as well as commercial service, for units on land.⁹ It also proposed changes to certain other AMTS-related rules.¹⁰ These rulemaking proposals remain pending in WT Docket No. 02-257.

- 3. Petitioner represents clients interested in participating in the upcoming AMTS auction that seek to use AMTS spectrum for telemetry purposes, such as fixed telemetry systems (*e.g.*, Supervisory Control and Data Acquisition), itinerant or temporary fixed applications (*e.g.*, surveying), and mobile applications (*e.g.*, meter reading). Petitioner seeks "clarification" of how the AMTS rules would apply to a licensee using the spectrum for telemetry purposes. Petitioner submits that potential bidders need the answers to these questions in order to "have basic information required to participate in the auction."
- 4. *Discussion*. Under Section 1.2 of its Rules, the Commission "may . . . issue a declaratory ruling terminating a controversy or removing uncertainty." It is well-established that we have broad discretion whether to issue such a ruling. Petitioner asks us to speculate on the effects of rules that have not been adopted and conditions that have not occurred. Without knowing what, if any, rule changes will be adopted in the pending proceeding referenced earlier, it would be premature to address the concerns raised by Petitioner at this time. Accordingly, we decline to grant the requested ruling. 17
- 5. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 253(d), and 332(c)(3)(A) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 253(d), 332(c)(3)(A), and Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, that the request filed by Duane Morris, LLC on March 18, 2005, IS DENIED.

⁸ See id. at 6707 ¶ 48-49. Specifically, for service areas with major waterways, substantial service can be demonstrated by continuous coverage of two-thirds of those waterways; and for service areas without major waterways, substantial service can be demonstrated by coverage of two-thirds of the area's population.

⁹ Maritel, Inc. and Mobex Network Services, LLC, *Notice of Proposed Rule Making*, WT Docket No. 04-257, 19 FCC Rcd 15225, 15228-29 ¶ 4 (2004).

¹⁰ See id. at 15229 ¶ 5.

¹¹ Letter at 2.

¹² *Id.* at 3. Specifically, Petitioner asks if there will be any substantial safe harbor for private mobile radio service operations; whether the requirement that AMTS stations provide priority to marine communications would apply; and whether waivers of other Part 80 rules would be needed to engage in co-primary telemetry operations.

¹³ *Id.* at 4.

¹⁴ 47 C.F.R. § 1.2.

¹⁵ See, e.g., Telephone Number Portability, Order, CC Docket No. 95-116, 19 FCC Rcd 6800, 6810 ¶ 20 (2004).

 $^{^{16}}$ Cf. Microscope Associates, Inc., Order, 19 FCC Rcd 10451, 10545 ¶ 8-9 (WCB 2004) (declining to issue declaratory ruling where matter was subject of pending remand, and issues likely would be resolved in that proceeding).

¹⁷ We note that the Commission will hold a pre-auction seminar for Auction No. 61 on May 25, 2005, which will provide interested parties an opportunity to question the Commission staff responsible for the AMTS licensing, service rules and auction procedures. *See* Automated Maritime Telecommunications System Spectrum Auction Scheduled for August 3, 2005: Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 61, *Public Notice*, DA 05-1047 (WTB rel. Apr. 21, 2005).

6. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm Chief, Public Safety and Critical Infrastructure Division Wireless Telecommunications Bureau